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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1168th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1996, at 10 a.m.

Chairman: Mr. BANTON

later: Mrs. SADIQ ALI

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The meeting was called to order at 10.10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Bosnia and Herzegovina

1. Mr. ABOUL-NASR said that the Permanent Representative of Bosnia and Herzegovina in Geneva should be invited to attend the Committee's discussion.

2. After a discussion in which Mr. GARVALOV and Mr. van BOVEN took part, the CHAIRMAN suggested that the Committee should proceed with discussion of the situation in Bosnia and Herzegovina and invite the Permanent Representative of Bosnia and Herzegovina to attend the Committee's discussion of its conclusions and any draft decision it might prepare.

3. It was so decided.

4. Mr. van BOVEN, speaking as rapporteur for Bosnia and Herzegovina, recalled the Committee's decision 1 (48) on Bosnia and Herzegovina, adopted at the previous session, concerning recommendations for follow-up action by the Committee, ways in which the good offices of the Committee could be used to promote understanding between ethnic groups in Bosnia and Herzegovina and the organization of a meeting between the Committee and the newly established Commission on Human Rights for Bosnia and Herzegovina. That decision had not yielded any results so far.

5. A number of current concerns about the situation in Bosnia and Herzegovina were described in a report of July 1996 by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the former Yugoslavia (E/CN.4/1997/5). The report dealt with the elections planned for September 1996, which did not come within the Committee's mandate, although the Special Rapporteur had pointed out that the elections might actually confirm the ethnic divisions in the country, as had happened in the Mostar elections in June 1996, by producing an unrepresentative result in areas which had been subject to "ethnic cleansing".

6. The report described the gradual return of refugees to areas where their communities were in the majority, although there had been virtually no return to areas where the refugees had become a minority (E/CN.4/1997/5, para. 27). Members of the Bosniak, Croat and Roma minorities in Republika Srpska were subjected to systematic intimidation and administrative discrimination, from racist abuse to actual physical attacks. In most incidents, the local police failed to intervene or conduct proper investigations (para. 29). The Serbs remaining in the suburbs of Sarajevo had been subjected to considerable harassment, including beatings, death threats, eviction, robbery and arson, and many Serbs had felt obliged to abandon their homes (para. 30).

7. Further information about the situation in Bosnia and Herzegovina was contained in a statement by the United Nations Security Council dated 8 August 1996, in which the Council had condemned all acts of ethnic harassment, had called upon the parties to the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) to stop the trend of

ethnic separation in the country and to preserve their multicultural and multi-ethnic heritage and had deeply regretted the undue delay in the creation of new independent media and the preservation of property rights. It had stressed that persons indicted by the International Tribunal for the former Yugoslavia who had failed to appear before the Tribunal should not stand for or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina. Finally, the Council had stressed that compliance with the requests and orders of the International Tribunal was an essential aspect of the implementation of the Peace Agreement, and that it was ready to consider the application of economic enforcement measures to ensure compliance by all parties with their obligations under the Agreement. In other words, the Security Council was considering economic sanctions, which was probably the only means of enforcement open to it.

8. Turning to the potential role of the Committee in the implementation of the Peace Agreement, he pointed out that the Committee was specifically mentioned in annex 6 to the Agreement, which dealt with human rights. He offered to draw up a short working paper expressing the Committee's concern at the continuing ethnic separation and ethnic cleansing in Bosnia and Herzegovina and calling upon all parties to cooperate with the International Tribunal. The Committee would then repeat its offers of assistance in connection with the matters listed in decision 1 (48). In addition, the Committee might draw the attention of all parties concerned to the provisions of article 4 of the Convention. There had been numerous reports of local radio broadcasts inciting racial hatred, and attempts had been made to set up independent media services, with the assistance of the Organization for Security and Cooperation in Europe. Article 4 could provide more valuable guidance in that field than any other international instrument. The Committee could also recommend to the High Commissioner for Human Rights the establishment of a programme of technical assistance in the field of education, based on the provisions of article 7 of the Convention. A contribution by UNESCO might also be valuable. The Committee could then discuss the working paper at a later meeting, to which the Permanent Representative of Bosnia and Herzegovina could be invited.

9. The CHAIRMAN, speaking as a member of the Committee, suggested that the working paper should include a reference to article 5 (b) of the Convention, dealing with the right to State protection against violence committed by Government officials or individual groups. Many reports of ethnic conflicts throughout the world described abuses actually committed by law enforcement officials or their failure to protect the victims of violence.

10. Speaking as Chairman, he suggested that Mr. van Boven should draw up his working paper and submit it to the Committee for consideration at a subsequent meeting.

11. It was so decided.

12. Mr. ABOUL-NASR wondered whether the return of refugees in Bosnia and Herzegovina should be a precondition for elections. The Secretary-General of the North Atlantic Treaty Organization, Mr. Javier Solana, had visited Bosnia and Herzegovina and concluded several agreements while he was there. Would information on them be included in the working paper?

13. Mr. de GOUTTES supported the proposals made by Mr. van Boven, particularly those relating to control of the media, education and training to promote inter-ethnic understanding, and cooperation with the International Tribunal.

14. There were numerous international initiatives under way in Bosnia and Herzegovina. The Committee should consider how to improve cooperation with other United Nations and international organizations in the area and establish contacts in Geneva with the Special Rapporteur of the Commission on Human Rights, with the Ombudsman, and with the Human Rights Chamber. The Chamber was made up of local and international judges who were responsible for ensuring the application of domestic and international instruments, such as the Convention, and therefore could provide information to the Committee.

15. Mr. GARVALOV said that in his opinion, the elections to be held in Bosnia and Herzegovina in September 1996 would merely confirm ethnic divisions. The Committee should consider organizing a mission to Bosnia and Herzegovina, as it had done for Kosovo and all parties to the conflict should be encouraged to cooperate fully with the International Tribunal.

16. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms on racial discrimination were weak and the European Framework Convention for the Protection of National Minorities did not provide for monitoring mechanisms, which meant it was of limited use. That left the International Convention on the Elimination of All Forms of Racial Discrimination as the main instrument that could help solve the problems in Bosnia and Herzegovina.

17. Mr. SHAHI said that the working paper should also include reference to whether free and fair elections could feasibly be held before the persons indicted for war crimes had been arrested. There was some argument as to whether conditions were right for elections in September which were likely to lead to the ethnic partition of Bosnia and Herzegovina.

18. Mr. DIACONU said that it was true that the European Convention for the Protection of Human Rights and Fundamental Freedoms referred only indirectly to discrimination on the grounds of race or national origin. However, the Council of Europe was working on an additional protocol to the Convention. Europe would then provide powerful protection for ethnic minorities.

19. Efforts to keep to the timetable for elections laid down in the Dayton Accords were not necessarily misguided. The international community needed to be able to work with a legitimate Government that reflected the realities of the situation in Bosnia and Herzegovina if progress were to be made.

20. The populations in Bosnia and Herzegovina were not ready to coexist, whether elections took place or not. Some Serbs had been forcibly evicted from their homes in Sarajevo, but many had chosen to leave voluntarily, rather than live under Muslim control.

21. Mrs. Sadiq Ali took the Chair.

22. Mr. CHIGOVERA said, according to the report of the High Commissioner for Human Rights (E/1996/87) on the situation in Bosnia and Herzegovina, Croatia and Yugoslavia, progress in the protection of human lives had already been made, but there was still enormous work to be done in the field of human rights. Local authorities were making it difficult for various ethnic groups to return to their homes. The High Commissioner's conclusions listed what he believed were the priorities of the human rights programme, which included taking a determined position against impunity, a human rights education campaign and a programme for the protection of minorities. The Committee should take heed of those priorities.

23. Mr. de GOUTTES, referring to comments made on European human rights bodies and instruments, said that the Council of Europe had set up a European Commission against Racism and Intolerance which had proposed extending the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms to cover racism, on the basis of an additional protocol to the Convention.

24. Mr. Banton resumed the Chair.

25. Mr. ABOUL-NASR, supported by Mr. SHERIFIS, said that he did not agree that none of the ethnic groups in Bosnia and Herzegovina wanted to live together. That may be true for some, but not all. Most Muslims, for example, wanted to coexist. Education programmes and the media should be used to encourage populations to return to their homes.

26. Mr. van BOVEN said, with regard to elections in Bosnia and Herzegovina, that there was one school of thought, also to be found among members of the Security Council, that was in favour of letting the political process agreed in the Dayton Accords take its course and remaining faithful to the timetable for elections. According to the statement of 8 August 1996, the Council had stressed the importance of elections in Bosnia and Herzegovina for the establishment of common institutions and as an important step towards normalization.

27. In paragraph 33 of her report (E/CN.4/1997/5) however, the Special Rapporteur of the Commission on Human Rights stated that present conditions were not conducive to the democratic operation of the electoral process. Those conditions included the failure to permit significant voluntary return to areas where returnees were now part of minority populations. Although from the Committee's point of view he had greater sympathy with the views of the Special Rapporteur, the views of the Security Council prevailed.

28. With regard to the comments made by Mr. Garvalov, he said the Committee might perhaps at some time discuss with the State party the possibility of sending a mission to Bosnia and Herzegovina.

29. Of the various options available to ensure cooperation with the International Tribunal, the most appropriate, and the one which appeared to be favoured by the Security Council, was to put additional pressures, probably of an economic nature, on the parties which failed to cooperate.

30. With regard to the next step to be taken, the Committee might wish to review its discussion later in the session on the basis of the paper which he would prepare and then take up the matter with the representative of the State party, as well as with other parties to the Dayton Accords.

31. Mr. YUTZIS said that the international community appeared to have forgotten the large-scale rape, murder and house-burning which had marked the breakup of the former Yugoslavia. Those events had destroyed the very fabric of society, which could not be repaired by an institutional framework alone. The Dayton Accords made no provision for such repair, and the Committee had both the right and duty to act in an advisory capacity in the social reconstruction process, but would need to make its voice heard. It might therefore set up a small working party to put forward proposals for such a role. In that connection, it was regrettable that his earlier proposal that the Committee should work as a United Nations expert body on inter-ethnic and interracial conflict had not been taken up.

32. The CHAIRMAN suggested that that role might come within what the United Nations Secretary-General had described as post-conflict peace-building. As such it would tie in with the Committee's position on Rwanda and ethnic separation generally. A working party might be useful, but a document would have to be prepared as a basis for discussion and some contact would be necessary with people outside the Committee who were working on similar lines.

33. Mr. YUTZIS said that the Committee would need to ensure that, if such a mechanism was established, arrangements were also made for follow-up and evaluation.

34. Mrs. SADIQ ALI suggested that some Committee members might act as international observers to ensure fair and free elections.

35. Mr. van BOVEN said that the suggestion merited further consideration as the Dayton Agreement certainly provided for election observers. It might be better for members to undertake such a function in a private capacity rather than as Committee members.

36. The CHAIRMAN suggested that the matter be taken up again later in conjunction with the question of Serbia and Montenegro. The Committee might also communicate with those representing the interested States parties.

Former Yugoslav Republic of Macedonia

37. Mr. RECHETOV said that, according to the 1991 census, the largest ethnic group in the former Yugoslav Republic of Macedonia was the Macedonians, numbering approximately 1,200,000, the second largest group was the Albanians, numbering 377,000, and other ethnic groups included Serbs, Gypsies and Turks. It was difficult to know how accurate the official figures for the Albanian population were. In the past, Macedonian Albanians had moved to the province of Kosovo in the Federal Republic of Yugoslavia (Serbia and Montenegro), in part because higher education in the Albanian language had been available there. Now, because of the unrest in Kosovo, they were returning to the former Yugoslav Republic of Macedonia. The Albanian population also had a higher-than-average birth rate. For all those reasons, Albanian sources

claimed that the proportion of Albanians in the population was not 21 per cent, which was the official figure, but as much as 30 per cent.

38. There were a number of areas of conflict between the Macedonian and Albanian populations. The Albanians were mostly Muslim, and held particularly strict views about education, which had led to a deterioration in relations between them and the Macedonian authorities. There were fewer Albanian-language schools than there had been, and university education still caused problems, although it was planned to open an Albanian-language faculty at Skopje University. The access of Albanians to television programmes and other media was limited because of the language problem. Albanians were under-represented in local administration and law enforcement, even in areas where they formed the majority of the population.

39. Non-governmental organizations had suggested various ways of improving the ethnic situation, for instance, by changing the wording of the Constitution so that the Macedonians were no longer treated as the "leading nation", or ending the status of the Orthodox Church as the official State religion. Other measures might be to increase the number of Albanians in local administration and law enforcement and provide more Albanian-language teaching at both school and university level.

40. It was important for the Albanian population of the former Yugoslav Republic of Macedonia to reaffirm its commitment to a unified State. He hoped that the Committee would have constructive ideas to offer in a situation which was serious but not yet hopeless.

41. Mr. ABOUL-NASR asked if there were foreign observers in the former Yugoslav Republic of Macedonia.

42. Mr. DIACONU asked for clarification of the term "leading nations" and whether it was used in the Constitution. Also, did the Constitution stipulate that the Orthodox religion was the official religion of the State? It would also be interesting to know whether Albanians were represented in the Parliament, whether the Albanian language was used in universities and whether Albanians wanted their own, separate, universities.

43. Mr. GARVALOV asked when the initial report of the former Yugoslav Republic of Macedonia would be submitted. It was his understanding that the Macedonian Church came within the framework of Eastern Orthodox Churches but that it had been recognized only by the Ukrainian Church, which had not been recognized by the other Churches.

44. Mr. RECHETOV (Country Rapporteur) said that international organizations were represented in the former Yugoslav Republic of Macedonia. With regard to the meaning of "leading nation", he said that, according to his information, the Republic was defined as "a nation State of Macedonian people". As in Russia, the number of people belonging to the Orthodox Church suggested that it was the most important.

45. There were Albanians in the Parliament. However, they felt that they were not sufficiently represented.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Seventh meeting of persons chairing the human rights treaty bodies (CERD/C/49/Misc.4)

46. The CHAIRMAN asked for the Committee's guidance as to what matters he should raise at the seventh meeting of persons chairing the human rights treaty bodies, to be held from 16 to 20 September 1996. The question of participation in the consideration of States parties reports by committee members who were nationals of the reporting State had already been raised, and in that connection he had requested that the relevant parts of the summary records of the discussions held in March 1996 should be made available to persons attending the chairpersons' meeting. He had also requested that the documentation relating to the Committee's discussions concerning the failure to get the meeting of States parties to consider matters other than elections to the Committee, together with the comments by Mr. Garvalov and Mr. Valencia Rodriguez, should likewise be made available.

47. Another matter to be raised was the proposal that States parties, instead of submitting separate reports in respect of each human rights covenant or convention, should prepare a single comprehensive report, and his draft (CERD/C/49/Misc.4) had been prepared as a basis for discussion.

48. Mr. van BOVEN said that the meeting of chairpersons should also discuss the lack of adequate structural support given to the treaty bodies by the Human Rights secretariat.

49. Mr. GARVALOV said he agreed with the points made by the Chairman in his draft (CERD/C/49/Misc.4). In preparing for the seventh meeting, the Committee would need to consider its reactions to the report of the sixth meeting and the experience it had gained at its two 1996 sessions. Points that commanded general consensus among the treaty bodies were the two principles of States parties' compliance with the human rights treaties and universality. The former did not necessarily follow on from the latter, as could be seen in the case of the widely ratified Convention on the Rights of the Child. The problem of overdue reports was another common concern on which the Committee could usefully share its experience with others. He had been under the impression that the other treaty bodies shared the Committee's unanimous agreement about the importance of the Committee's early warning and urgent procedures, but had been disheartened to find at the sixth meeting that one of the chairpersons now appeared to be opposed to the idea.

50. All avenues should be explored to achieve closer cooperation among the treaty bodies and between them and United Nations organs, an example being the joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He would not encourage a proliferation of common activities, but joint action in certain areas would be welcome. The Chairman might also wish to stress the importance the Committee attached to direct contact with the Secretary-General on matters which it deemed urgent and essential.

51. He was against the idea of States parties submitting a consolidated report as being likely to impair the efficacy of the Committee's consideration of States parties' reports. It was up to the States parties, and no one else, to decide whether the Convention should be amended or not.

52. Mr. VALENCIA RODRIGUEZ, endorsing the content of the Chairman's draft, said that the Chairman could usefully inform the other chairpersons of the Committee's procedure and practice in dealing with overdue initial and periodic reports.

53. The only reference in the Convention to the functions of meetings of States parties was in article 8, paragraph 4, and concerned elections of Committee members. If, however, the States parties themselves wished to broaden the scope of their competence, they might, at the request of the persons chairing the human rights treaty bodies, deal with other, substantive matters of importance to the Committee. Another major question was the follow-up to the Committee's meeting with the Sub-Commission. A further joint meeting was needed to discuss action to be taken on suggestions and recommendations that had not been followed up. In general, exchanges of information with other treaty bodies, especially the Commission on Human Rights, needed to be stepped up. Emphasis should be placed on more effective contact with the Secretary-General, the High Commissioner for Human Rights and other United Nations bodies, including the possibility of direct contact with the Secretary-General where that was justified. The Chairman should also refer to the Committee's contribution in conducting field missions and inform the other bodies of the results of such missions. He might request the cooperation of the other treaty bodies in seeking to obtain the reports referred to in paragraph 2 (b) of article 15 of the Convention, so that the Committee could fulfil its obligations under that article. On the subject of the submission of a consolidated report, he urged compliance with the provisions of article 9, paragraph 1, of the Convention.

54. Mr. SHAHI, expressing his general agreement with the Chairman's draft, said that, while he understood the reasons behind the proposal that States parties should submit a single consolidated report, he was not sure that a single report would ease the burden on reporting States. All the human rights instruments were different, as were the reporting guidelines, recommendations and requirements evolved over the years by the various treaty bodies. He agreed with the statement in paragraph 8 of the Chairman's draft that the Committee wished the monitoring process to be improved and would deplore any deterioration in standards. The Committee should adhere to its mandate under the Convention and to its past practice, the onus being on those who advocated a consolidated report to adduce convincing arguments in writing.

55. He was concerned to hear that one of the chairpersons of the treaty bodies opposed the Committee's work and its recommendations to others in regard to early warning and urgent procedures. He drew attention to paragraph 4 of document A/48/18, annex III, from which it was clear that the Committee's early warning and urgent procedures had been adopted precisely because of the encouragement given by the Secretary-General to treaty bodies to bring massive violations of human rights to the attention of the Security Council together with recommendations for action. Jurisprudence had now emerged on human rights action by the Security Council, which was the only

United Nations body with the potential - if not always the will - to take action to prevent massacres. He therefore agreed with other members that the Committee should bring cases of massive violations directly to the attention of the Security Council. After the express request by the Secretary-General, it would not be consistent with its status as an international treaty body to report through some other institution or individual. He also strongly supported the proposal to establish more effective contacts with the High Commissioner for Human Rights and with other treaty bodies. Liaison procedures and regular meetings between the chairpersons already existed; it was now a matter of ensuring effective follow-up. The Committee could play an appreciable role in conducting field missions, but he had some doubts about proposing members as election observers, since the United Nations had special procedures for such functions. Post-conflict peace-building was, however, an appropriate context for the Committee to assert its role.

56. Mr. ABOUL-NASR observed that some of the subjects being discussed involved changes to the very nature of the Committee's work and the Convention itself. He was not in favour of States parties submitting a consolidated report to all treaty bodies. While he agreed with most of the points raised by other speakers, he objected categorically to the Committee taking any matters directly to the Security Council. The Convention, in article 9, required it to report annually, through the Secretary-General, to the General Assembly. The Security Council was a political body dominated by one member which intervened in the affairs of certain States, applying double standards, and did not represent the majority will. His outlook on field missions was very conservative. Although they should have some backing, they did not fall within the scope of the Convention, and he was reluctant to accept any further expansion of the scope of the Convention, which aroused fears among States parties.

57. It would be useful to exchange views with other treaty bodies on the problems encountered with overdue reports. One of the main reasons for the failure by States parties to the Convention to report to the Committee, apart from the expense and time involved, was the huge number of questions they were expected to answer and the fear of appearing before the Committee because of the way it functioned and the kind of questions it asked. A case in point was the direct questioning on the subject of article 14 of the Convention, a clause which the western European countries had at the time sought to make binding, as they had done for the Optional Protocol to the International Covenant on Civil and Political Rights, an endeavour resisted by the overwhelming majority of States Members of the United Nations. Experts on the Committee belonging to that same group of countries now continued to press the point with reporting States. It would be useful to hear the views and share the experience of other treaty bodies on the question of the burden of reporting obligations and on the continued broad interpretation of the scope of the Convention.

58. Referring to the important question of the effects of the highly inadequate administrative services on the work of the treaty bodies, he drew attention to the huge workload and financial restrictions affecting the Centre for Human Rights, and asked whether the chairpersons of the treaty bodies could consider ways and means of alleviating its task and specify what they

expected of the Centre. He saw the meeting of chairpersons as an opportunity for treaty bodies to benefit from each other's experience but not to trespass on each other's domain.

59. Mr. van BOVEN, speaking on a point of order, referred to the point raised by Mr. Aboul-Nasr concerning article 14 of the Convention. Article 14 and the Optional Protocol to the Covenant on Civil and Political Rights were not, as he had suggested, a typically western proposal defeated by a large majority. The proposal to include the clause that had become the Optional Protocol in the Covenant had originally been put forward by Nigeria and the Netherlands, had not initially been favoured by the United Kingdom and France and had been rejected by a majority of one vote. He cautioned against over-simplification and against thinking of certain issues as pitting the West against all other delegations. The United Kingdom, for instance, had still not made the declaration under article 14.

60. Mr. ABOUL-NASR, speaking on a point of order, said that the countries which had voted for and against the proposals at the time were on record and could be checked. With respect to the Covenant, he himself had presented the motion to place the relevant clause in a separate protocol, a motion which had been carried by one vote.

The meeting rose at 1.05 p.m.